HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No.1259 of 2006

–

–

Between:

The General Manager,

Area-I, Singareni Collieries Co. Ltd.,

Ramagundam Division,

Karimnagar District

……Appellant

And

The Presiding Officer,

Industrial Tribunal – I, Chandravihar,

M.J. Road, Hyderabad and another

……Respondents

:: JUDGMENT ::

Counsel for the Appellant : Ms. V. Uma Devi

December 04, 2006

Per G.S. SINGHVI, CJ

This appeal is directed against order dated 12-09-2006 vide which the learned Single Judge dismissed the writ petition filed by the appellant for quashing award dated 9-3-1994 passed by the Presiding Officer, Industrial Tribunal-I, Hyderabad in I.D.No.66 of 1990.

The background facts:

The workmen of GDK-6A and B Inclines of Godavarikhani Mines of Singareni Collieries Company Limited (for short, 'the company') raised an industrial dispute in the matter of denial of lay-off compensation by contending that even though there was breakdown of power supply for more than two hours in the second shift on 29-9-1988, the management of the company did not display lay-off notice and did not pay them lay-off compensation as was done in the case of the workmen of GDK-11A, GDK-7 and 7A Inclines. After considering the failure report, the Central Government referred the dispute to Industrial Tribunal-I, Hyderabad (for short, 'the Tribunal').

In the statement of claim filed by the workmen, it was pleaded that at the commencement of second shift, there was breakdown of the main power supply, which lasted for more than two hours; that they waited at the mine premises with a view to go down the mine on the restoration of electricity, but due to non-availability of power, they left the premises after 5-30 p.m.; that as per the provisions of the Industrial Disputes Act, 1947 (for short, 'the Act') the management was required to display lay-off notice because the breakdown of power was more than two hours, but the required notice was not displayed and they were not paid lay-off compensation. The workmen further pleaded that the power breakdown had affected GDK-7 and 7A and GDK-11A Inclines as well and the managers of those Inclines not only displayed lay-off notices, but paid lay-off compensation to the workers, but they were denied lay-off compensation.

In the counter-affidavit filed on behalf of the appellant, it was admitted that there is a common circuit for supply of electricity to all the Inclines and that there was breakdown of main power supply at GDK-11A Incline, which also affected GDK-7 and 7A Inclines and GDK-6A and B Inclines. According to the management, when the breakdown occurred, they contacted the area workshop official who intimated that the power will be restored within a short-time. Thereupon, the Mine Manager of GDK-6A and B Inclines informed the workers that the power will be restored before 5-30 p.m. and they should wait on the surface and as soon as the power supply is restored, they can go down the mines for normal duties, but the piece-rated workers refused to go down the mine and demanded lay-off. It was further pleaded that the time-rated workers and supervisory staff entered the mine by 5-30 p.m. and, therefore, the lay-off demanded by the piece-rated workers was not accepted. As regards the other

Inclines, the management's plea was that the power was restored in GDK-11A, 7 and 7A Inclines only at 8 p.m. and, therefore, the workers of those Inclines were paid lay-off compensation. The management also gave the details of the strike resorted to by the workers and pleaded that the same had resulted in production loss of ten days.

Bandaru Satyanarayana, President of the Workers Union, who appeared as W.W.1 corroborated the averments contained in the statement of claim. He gave out that the workers remained at the Incline till 6-15 p.m., but the power was restored only after 8 p.m. He further deposed that there was strike because the management did not pay the lay-off compensation to the workers. Shri E. Ramachandran, who was as Under Manager in GDK-6A Incline appeared as management witness (M.W.1). He stated that there was power breakdown at the beginning of the second shift, but the supply was restored by 5-30 p.m. and all the time-rated workmen went inside the mine. Shri Ramachandran further deposed that he consulted Divisional Engineer (Workshop) who informed that the power will be restored in 2½ hours and, as a matter of fact, the power was restored at 5-30 p.m., but no production could take place because the piece-rated workers refused to go in the mine. The deponent further stated that no action was taken against the workers due to political pressure of Mr.Neelam Mallesh, Member of Legislative Assembly belonging to the Telugu Desam Party.

After analyzing the pleadings of the parties and evaluating the evidence, the Tribunal held that the version of the management about restoration of the supply of power to GDK-6A and B Inclines was unacceptable. According to the Tribunal, when there was a common supply circuit, the restoration of power would have been uniform and not for GDK-6A and B Incline alone. The Tribunal then held that once the Mine Managers of GDK-11-A, 7 and 7A Inclines displayed lay-off notices and paid the lay-off muster to the workers as per the statute, there could be no justification to discriminate the workers of GDK-6A and B Inclines. Accordingly, award dated 9-3-1994 was passed directing the management to pay lay-off musters to the workers of the second shift of GDK-6A and B Inclines.

The learned Single Judge held that the findings recorded by the Tribunal on the issue of discrimination practiced by the management of the company qua the workers of the second shift of GDK-6A and B Inclines is based on correct appreciation of evidence and does not call for interference under Article 226 of the Constitution of India.

Ms.V. Uma Devi, learned counsel for the appellant argued that the award of the Tribunal and the order of the learned Single Judge are liable to be set aside because the same are based on misreading of the evidence produced by the parties. She further argued that in the absence of any contrary evidence, the Tribunal ought to have accepted the statement of Shri E. Ramachandran that power to GDK-6A and B Inclines was restored at 5-30 p.m. and the workers deliberately refused to go in the mines. She then argued that the workers of the company had resorted to strike at the instance of the union and, therefore, the Tribunal ought not to have awarded lay-off compensation to the workers of GDK-6A and B Inclines. Learned counsel assailed the order under challenge on an additional ground that while refusing to interfere with the award

of the Tribunal, the learned Single Judge omitted to consider the patent error committed by the Tribunal in appreciating the evidence.

Before dealing with the arguments of the learned counsel, we deem it proper to remind ourselves that the limited scope of judicial review of orders and awards passed by the Industrial Tribunal, Labour Court etc. Generally speaking, the High Court will issue a writ of certiorari if it is found that the order under challenge has been made by the Court or Tribunal or quasi-judicial which did not have the jurisdiction to pass such order or where such Court, Tribunal or Authority has failed to exercise the jurisdiction vested in it or where the action complained of has been taken in disregard of rules of natural justice. A writ of certiorari can also be issued if it is shown that while passing the order under challenge the Subordinate Court, Tribunal or quasi-judicial authority ignored legally admissible evidence or took into consideration inadmissible evidence or overlooked relevant material or the order is based on extraneous consideration/factors. However, a writ court cannot sit in appeal over the orders of the Subordinate Court, Tribunal or quasi-judicial authority and interfere with the findings and conclusions recorded by such Court, Tribunal or Authority merely because on a re-appreciation of evidence different finding or conclusion is possible. The writ court cannot go into sufficiency and adequacy of evidence which may have been relied by the Subordinate Court, Tribunal or quasi-judicial authority for reaching a particular finding or conclusion.

In **Syed Yakoob v. K.S. Radhakrishnan** the Supreme Court considered the scope of the High Courts' power to issue a writ of certiorari and laid down the following propositions:

> i) A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice.
>
> ii) The jurisdiction of High Court to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be

corrected by a writ of certiorari.

iii) A finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court.

The law laid down in **Syed Yakoob**'s case (supra) has been followed in a recent judgment in **Mohd. Shahnawaz Akhtar & Anr. V. Ist ADJ Varanasi & ors.**

In **Shaikh Mahammad Umarsaheb v. Kadalaskar Hasham Karimsab and others**, the Supreme Court, while dealing with the scope of High Court's power under Article 226 to re-appreciate the evidence produced before the trial Judge, held as under:

"Where the evidence adduced before the trial Judge was not so immaculate that another Judge might not have taken a different view, it cannot be said that there was no evidence on which the trial Judge could have come to the conclusion he did. When the trial Court accepts the evidence, the High Court which is not hearing an appeal cannot be expected to take a different view in exercising jurisdiction under Articles 226 and 227."

I n **Jitendra Singh Rathor v. Shri Baidyanath Ayurved Bhawan Ltd.**, the Supreme Court considered the question whether in exercise of power under Article 227, the High Court can interfere with the discretion exercised by the Tribunal under Section 11-A of the Act and observed :

"Under Section 11-A wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case. The High Court under Article 227 of the Constitution does not enjoy such power though as a superior Court, it is vested with the right of superintendence. It is entitled to scrutinize the orders of the subordinate tribunals within the well-accepted limitations and, therefore, it can in an appropriate case quash the award of the Tribunal and thereupon remit the matter to it for fresh disposal in accordance with law and directions, if any. But it is not entitled to exercise the powers of the Tribunal and substitute an award in place of the one made by the Tribunal or substitute one finding for another and similarly one punishment for another, as in the case of an appeal where it lies to it."

In **R.S. Saini v. State of Punjab and others** the Supreme Court examined the correctness of an order passed by the High Court which had

dismissed the writ petition filed by the appellant against his removal from the post of the President of Municipal Committee. While confirming the order of the High Court, the Supreme Court observed as under:

> "The court while exercising writ jurisdiction will not reverse a finding of the inquiring authority on the ground that the evidence adduced before it is insufficient. If there is some evidence to reasonably support the conclusion of the inquiring authority, it is not the function of the court to review the evidence and to arrive at its own independent finding. The inquiring authority is the sole judge of the fact so long as there is some legal evidence to substantiate the finding and the adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in writ proceedings."

In **Surya Dev Rai v. Ram Chander Rai,** the Supreme Court traced out the history of the development of High Court's jurisdiction to issue writs, orders or directions under Articles 226 and 227 of the Constitution of India and laid down the following propositions:

> i) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.
>
> ii) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.
>
> iii) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the

subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.

iv) The parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in appeal or revision preferred at the conclusion of the proceedings. But there may be cases where "a stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by

the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge."

Since we are exercising appellate jurisdiction under Clause 15 of the Letters Patent in relation to an order passed by the learned Single Judge under Article 226 of the Constitution of India, the limitations applicable on the scope of Court's power of judicial review, which are applicable to the exercise of power under Article 226 of the Constitution, will have to be kept in mind by the Division Bench.

In the light of the above, we shall now consider whether the Tribunal committed an error by directing the management of the company to pay lay-off compensation to the workers of GDK-6A and B Inclines and whether the order of the learned Single Judge dismissing the writ petition calls for interference by the Division Bench.

Admittedly, the circuit feeding power to all the mines of GDK-6A and B Inclines, GDK-11A, GDK-7 and 7A Inclines is common and the breakdown which occurred at the commencement of the second shift uniformly affected all the Inclines. It is also an admitted position that the managers of GDK-7 and 7A Inclines and GDK-11A Incline declared lay-off because the power breakdown continued for more than two hours and the workers of those Inclines were paid lay-off compensation. Another fact on which there is no dispute between the parties is that power to GDK-7 and 7A Inclines and GDK-11A Incline was restored only at 8 p.m. In this backdrop, the view taken by the Tribunal that the management's version about restoration of power supply to GDK-6A and B

Inclines at 5-30 p.m. was not believable cannot be termed as erroneous. In the written statement filed on behalf of the management before the Tribunal, it was categorically averred that power was supplied to all the Inclines through the same circuit and the breakdown was at GDK-11A Incline. If that was so, it is impossible to believe that the power had been restored to GDK-6A and B Inclines and not to GDK-7 and 7A Inclines and GDK-11A Incline. However, the fact of the matter is that the power to
GDK-7 and 7A Inclines and GDK-11A Incline was restored only at 8 p.m. Therefore, the Tribunal rightly concluded that the statement of Shri E. Ramachandran regarding restoration of the power supply to GDK-6A and B Inclines at 5.30 p.m. does not inspire confidence. We may add that the management had conveniently omitted to examine the Divisional Engineer (Workshop) to whom Shri E. Ramachandran is said to have contacted to find out the status of the power supply. If that officer had appeared in the witness box, he could have been cross-examined by the representatives of the workmen union. He could also have been asked to produce documents relating to power breakdown and restoration thereof. By not examining the crucial witness, the management of the company had deliberately tried to suppress the truth. Indeed, it is neither the pleaded case of the appellant nor any evidence was produced before the Tribunal to show that the concerned Divisional Engineer was not available or that the record relating to power breakdown and restoration of supply of electricity was misplaced. Therefore, it cannot be said that the learned Single Judge committed an error by refusing to interfere with the award of the Tribunal. Moreover, we cannot sit in appeal over the award passed by the Tribunal and re-evaluate the pleadings of the parties and evidence produced before the Tribunal and interfere with the finding of fact recorded by the Tribunal simply because there is a possibility of our forming a different opinion.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP No.2645 of 2006 filed by the appellant for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

04-12-2006

svs